



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION ENERGY VIRGINIA FOR UNPERMITTED ACTIVITY

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Virginia Electric and Power Company regarding the Woolridge-Otterdale and Lucks Lane Road Widening Projects, Chesterfield, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the

contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "Dominion Energy" means Virginia Electric and Power Company D/B/A Dominion Energy, a corporation authorized to do business in Virginia. Dominion Energy is a "person" within the meaning of Va. Code § 62.1-44.3.
6. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
12. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
13. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c)

contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10

14. "Property" or "Parcel" means for the Woolridge-Otterdale Road Widening Project, the property located an approximate 2.8 mile segment of Woolridge Road (Route 668) between Swift Creek Reservoir and Otterdale Road (Route 687) and a 0.8 segment of Otterdale Road from Woolridge Road to Fox Creek Crossing in Chesterfield County. For the Lucks Lane Road Widening Project it means the property located along an approximate 0.57 mile segment of Lucks Lane (Route 720) between Route 288 and East Evergreen Parkway in Chesterfield County. Although the Property is owned by several entities, Chesterfield County had easements on the properties for the Road Widening Projects.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "USACE" means the United States Army Corps of Engineers.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VWP" means Virginia Water Protection.
25. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

26. “Wetland impacts” means the disturbance or alteration of wetland functions and values. These disturbances may result from filling, grading, removal of vegetation, construction, changes in water levels and drainage patterns of wetlands, and the alteration of the physical, chemical and biological components of wetland ecosystems.

SECTION C: Findings of Fact and Conclusions of Law

1. The County of Chesterfield proposed two projects for roadway improvements. One project for Lucks Lane and the other project for Woolridge and Otterdale roads which consisted of widening the roads from two-lane to four lanes divided roadways. As requested by the County, Dominion Energy initiated two electric distribution projects for utility relocation in support of these projects.
2. On January 27, 2017, DEQ was notified by Dominion Energy that trees had been removed in wetland areas as part of the project activities for the Woolridge Road Widening Project and that required permits had not been received.
3. On February 15, 2017, DEQ staff conducted a site inspection of the Woolridge-Otterdale Road Widening Project and observed the following unauthorized impacts to wetlands and streams: 0.30 acre of palustrine forested (PFO) wetland and 0.04 acre of palustrine emergent (PEM) wetland had been disturbed to relocate a utility line, plus 74 linear feet of stream had been impacted due to placement of vegetative debris and severe rutting from the use of heavy equipment. DEQ had not issued a VWP Permit for these impacts.
4. On March 16, 2017, DEQ staff conducted a site inspection of the Lucks Lane Road Widening Project and observed the following unauthorized impact to wetlands: 0.12 acre of PFO. DEQ had not issued a VWP Permit for these impacts.
5. Va. Code §62.1-44.15:20(A) states “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland; a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flowing or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”

6. 9 VAC 25-210-50(A) states that “Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities or cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanently flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”
7. On December 11, 2017, DEQ issued NOV No. 1709-000530 to Dominion Energy for the above described violations. Dominion Energy had met with DEQ on October 26, 2017, prior to the issuance of the NOV and discussed the violations cited in the NOV.
8. On January 2, 2018, Dominion Energy submitted a response to the NOV. Dominion Energy indicated that it has taken steps to prevent an occurrence of a similar unpermitted activity by establishing a new formal environmental screening process to address projects where another entity may be responsible for permitting. Incorporated into the process is a formal handoff of all permits obtained to project and construction prior to initiation of work. In addition, Dominion Energy has allocated new staff positions to support the screening of new projects and ensure compliance during construction.
9. Based on the results of the site inspections, review of the permit file, and meetings, the Board concludes that the Dominion Energy has violated Va. Code § 62.1-44.15:20.A; and 9 VAC 25-210-50.A as described in Section C(4) through C(6), above.
10. After discussions with the USACE and DEQ regarding the Woolridge-Otterdale project impacts, Dominion Energy submitted a Preconstruction Notification to the USACE on April 12, 2017 to cover impacts to jurisdictional areas associated with the tree removal that had already occurred and the remaining wetland impacts that were required to relocate the utility line. On May 26, 2017, Dominion Energy received Nationwide Permit # 12 (NWP #12) verification from the USACE. The NWP #12 was later updated on August 8, 2017. Dominion Energy stated that they had completed all preconstruction requirements, including wetland mitigation purchase for conversion impacts, prior to reinitiating work in July 2017. Dominion Energy reported that they were continuing to operate under the NWP #12 and would complete all site restoration prior to submitting the Certificate of Compliance to the USACE.
11. With regard to the Lucks Lane project, Dominion Energy said that they have received copies of the Phase II permits (WP3-17-0420 issued August 23, 2017; SPGP) obtained by Chesterfield County, and the wetland impacts referenced in the NOV are covered by this Permit and have been mitigated through the County’s purchase of wetland mitigation bank credits.

12. Dominion Energy has completed the corrective actions to address the unauthorized impacts to wetland and surface waters.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Dominion Energy and Dominion Energy agrees to:

1. Pay a civil charge of \$32,657 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Dominion Energy shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Dominion Energy shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Dominion Energy for good cause shown by Dominion Energy, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No.1709-000530 dated December 11, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Dominion Energy admits the jurisdictional allegations, and agrees not to contest, but does not admit the findings of fact, and conclusions of law.

4. Dominion Energy consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dominion Energy declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Dominion Energy to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dominion Energy shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dominion Energy shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dominion Energy shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dominion Energy. Nevertheless, Dominion Energy agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Dominion Energy has completed all of the requirements of the Order;
 - b. Dominion Energy petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dominion Energy.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dominion Energy from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Dominion Energy and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Dominion Energy certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Dominion Energy to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Dominion Energy.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

Virginia Electric and Power Company voluntarily agrees to the issuance of this Order.

Date: 8/30/19 By: Angela Tornabene, Vice President Environmental Services
(Person) (Title)
Virginia Electric and Power Company

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 30th day of

August, 2019, by Amanda Tornabene who is

Vice-President of Virginia Electric and Power Company



Angela B. Fitzgerald
Notary Public

7022016
Registration No.

My commission expires: 3/3/2022

Notary seal: